



IN THE  
SUPREME COURT OF THE UNITED STATES  
OCTOBER TERM, 1945

---

NO. 1016

Rose Mary Hash, Petitioner

Vs:

Commissioner of Internal Revenue

NO. 1017

G. Lester Hash, Petitioner

Vs:

Commissioner of Internal Revenue

---

PETITION FOR REHEARING

---

To the Honorable Chief Justice and Associate Justices  
of the Supreme Court of the United States:

Your Petitioners, Rose Mary Hash and G. Lester Hash, pray that this Court rehear and reconsider its denial of the petitioner's petition for the issuance of writs of certiorari to review the decision of the Circuit Court of Appeals for the Fourth Circuit in the above entitled cases.

On March 29, 1946, your petitioners filed with your Honorable Court a petition for writs of certiorari to the United States Circuit Court of Appeals for the Fourth Circuit in the above styled cases.

The Respondent filed its brief in opposition with your Honorable Court on April 19, 1946.

Your petitioners filed their reply brief with your Honorable Court on April 29, 1946.

On May 6, 1946, your Honorable Court refused the writs of certiorari.

The history of the case, the questions presented, the statutes and regulations involved, the specifications of errors and the reasons for granting the writs are all set forth in the petition for certiorari, the brief in support thereof and the reply brief in support, to which reference is made and will not be repeated here.

#### GROUND FOR GRANTING THE PETITION

1. THE NET RESULT OF THE DECISIONS BELOW WILL BE A CONFISCATION OF PROPERTY WHICH CANNOT BE JUSTIFIED UNDER ANY INCOME TAX STATUTE.

Your Petitioners feel that a gross inequity is being imposed upon them which may not have been viewed by this Court in its consideration of the Petition for Writs of Certiorari.

Under the decisions below the Petitioners are being taxed on twice the amount of income to which

they are entitled under state law in view of covenants made by them.

The Petitioners cannot legally invade the corpus or income of the trusts created.

Since these trusts are equal partners in valid partnerships and are entitled to the same share of income as the Petitioners, the inclusion of the trust income makes the taxable income of the petitioners twice the amount of their legal income.

The income tax of the Petitioners will therefore be in excess of the income, to which they are legally entitled, as soon as the composite rate of tax exceeds fifty per cent of the taxable income. At the present rates of tax, the Petitioners are and will be subject to a composite rate in excess of fifty per cent of their taxable income. The income tax will thus exceed the income to which they are legally entitled under local property laws. Under these laws they have no recourse against the trusts for the taxes paid. *The net result of the decisions below is therefore a confiscation of property which cannot be justified under any income tax statute, no matter which doctrine of Federal income taxation may be applied.*

Congress never could have intended such a result and no interpretation of the statute enacted by Congress can reasonably produce such effect.

There is a very grave and important question of federal law raised hereby which likely has not been considered by this Honorable Court in the refusal to review the decisions of the Circuit Court of Appeals

for the Fourth Circuit.

A reconsideration from this angle alone, seems, therefore, fully justified and highly desirable.

II. REGULATIONS ISSUED BY THE COMMISSIONER AS TO THE TAXATION OF TRUST INCOME HAVE NOT BEEN APPLIED IN THE CASES AT BAR, ALTHOUGH THEY ARE SUPPOSEDLY RETROACTIVELY APPLICABLE TO TAXABLE YEARS BEGINNING PRIOR TO JANUARY 1, 1946.

If these regulations were applied sub-section by sub-section to the facts in the present cases, no other holding could be made than that the Petitioners as grantors are not taxable on the income of the trusts.

If these regulations really are a proper restatement of existing law, then the holding in the decisions below should be reconcilable with the regulations. If the decisions below are not reconcilable with these regulations, then such regulations are not a proper restatement of existing law and should be wholly or partially voided; or the decisions below are not in keeping with existing law and should be reviewed.

We do not want to burden the Court with a lengthy enumeration of the conflicts between these regulations and the decisions below, but we feel that a thorough and renewed scrutiny is justified and further reason for granting this Petition.

The reservation contained in the regulations as to the creator of a family partnership is not applicable here since a family partnership between husband and wife has existed before the creation of the trusts and has been recognized by the Commissioner. No new family partnership has therefore been formed by the Petitioners and the validity of the partnership has been expressly recognized by the tax court's clear findings of fact.

III. THE CONFLICT OF THE DECISIONS OF OTHER CIRCUIT COURTS OF APPEAL AND WITH APPLICABLE DECISIONS OF THIS COURT ARE NOT RESOLVED BY THE REFUSAL TO REVIEW THESE DECISIONS.

The petition for writs of certiorari has set forth in detail these conflicts and they need not be repeated here.

The Petition has further stressed the importance of the question involved and the desirability of obtaining the views of this Court.

The confusion created in both jurisdiction and administration, and admitted by the Commissioner, will not be alleviated by this Court's refusal to review the instant cases.

**CONCLUSION:**

For the foregoing reasons, it is respectfully urged that a rehearing be granted and the order denying the Petition for Writs of Certiorari be reconsidered.

The undersigned counsel of record for the Petitioners certifies that this Petition for a rehearing is presented in good faith and not for the purpose of delay.

Respectfully submitted,

**OPPIE L. HEDRICK**  
*Counsel for Petitioners.*

